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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,219	04/01/2004	Katalin Coburn	32416-1001	5389

7590 07/15/2008

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EXAMINER	
PRATT, HELEN F	
ART UNIT	PAPER NUMBER
1794	
MAIL DATE	DELIVERY MODE
07/15/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/814,219	COBURN, KATALIN	
	Examiner	Art Unit	
	Helen F. Pratt	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 June 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3,5-8,11-16,18,21,22,25,29-33,35-43 and 45-52* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3,5-8,11-16,18,21,22,25,29-33,35-43 and 45-52* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 6-8, 11-15, 18, 21, 22, 25, 29-33, 35-43, 45-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edson (306,727) in view of the prior art (specification page 7, lines 15-22) and Cammarn et al. (5,417,999) and Avera (3,615,590) and Stockton (1,395,934) and further in view of Rombauer (page 564).

Edson discloses a process of making a peanut paste by roasting peanuts and grinding the peanuts as in claim 1 (col. 1, lines 10-40). No mention is seen of blanching the nuts. Claims 1, 29, 30 differs from the reference in the use of unblanched peanuts (for the sake of argument) and in roasting nuts to a particular temperature and in the step of grinding to a coarse paste with a particular particle size. Applicant's specification on page 7, lines 15-21) discloses that it is known to make natural peanut butters without adding hydrogenated fats or emulsifiers. Cammarn et al. disclose that it is known to make peanut butter using unblanched white skinned peanuts (abstract) and to roast the nuts to 420 F for 4.4 minutes (col. 4, lines 60-70). Avera discloses that roasting develops flavors (col. 4, lines 30-50). As roasting of nuts is well known, and it is known that roasting develops flavors, it is seen that it would have been within the skill of the ordinary worker to roast at a particular temperature, since the flavor developed

during roasting is due to a time- temperature relationship. Stockton discloses that the degree of oil separation can be prevented partially by coarse grinding, that the finer the grinding the more pronounced the tendency to gravitational separation (page 1, lines 89-103). Rombauer disclose a process of making peanut butter by roasting and grinding nuts in amounts over 90% with oil (page 564, under "Peanut Butter) (claims 31, 32). This recipe does not contain any of the ingredients which have been excluded from the claims. Nothing is seen that the particle size of the paste would not have been coarse, since an electric blender was used. Therefore, it would have been obvious to one of ordinary skill in the art to use unblanched peanuts as disclosed by Cammarn et al and to roast to a particular temperature to develop the flavor of the nuts, and to grind to a coarse grind as shown by Stockton and to only use nuts and oil in the composition in the process of Edson.

The independent claims further require that the composition has a low fat content and a low oil separation, and does not rely on hydrogenated oils, stabilizers, emulsification processes and has a very low oil separation. Edson discloses applicant's process and does not require any of the ingredients or processes, which are not, required as in claims 1 and 19 and has a low oil separation, as the process has been shown in combination. As above, if it is known that a particular degree of grinding keeps the nuts from exuding oil, then it would have been obvious to grind to the degree in which the level of oil exudation is acceptable. Therefore, it would have been obvious to treat as claimed as shown by the above references.

Claims 1 and 14 further require particular sizes of nut particles. However, as above, it is known that oil separation can be partially prevented by coarse grinding; it would have been obvious to grind to particular degrees, which also allow for a minimum of oil exudation. Nothing has been shown that grinding as in Rombauer would have not produced the claimed particle size. Also, it is seen that it would have been within the skill of the ordinary worker to grind to any particle size, since grinding equipment is well known and coarse particle sizes are known as in crunchy peanut butter. Therefore, it would have been obvious to grind to levels, which still kept the oil from exuding since such is the aim of the coarse grinding.

Rombauer discloses a process as in claims 1, 5, 14, 31, 32, 33, 35, 42, 45-48 of using roasted nuts and oil and grinding them with sugar and salt in amounts over 90% (page 564).

Nothing is seen as in claims 1, 14, 33, 42 that the nuts are not coarse ground as only a blender is used in Rombauer.

Nothing is seen as in claim 25 that adding enough ingredients such as flavoring which are salt and sugar in Rombauer is not 0.75%. therefore, it would have been obvious to process nuts as disclosed by Rombauer in the process of the combined references.

Claim 43 further requires a particular dark color. However, as above it is known to roast to develop flavors, and it would have been within the skill of the ordinary worker to roast to a particular color. Therefore, it would have been obvious to roast to particular colors.

Certainly a temperature of from 145 to 165 F. as in claim 6 can be reached in any normal cooling step. It is not clear from the reference to Edson just what temperature is generated during the grinding step. Nothing is seen that it would not have been as claimed. Therefore, it would have been obvious to cool to temperatures below the grinding temperature.

Claim 7 further requires putting the peanut paste into an agitating, mixing bank. However, no weight is given to the type of apparatus in a process claim. Certainly, agitators such as mixers are well known. The reference discloses adding ingredients such as to the mixture (col. 2, lines 40-48). Therefore, it would have been obvious to add sugar or salt to the peanut mixture and agitate by known mechanical means.

Claims 8 and 38 further requires adding dried fruits into the peanut mixture. Edson discloses using peanut paste with sweetmeats, which are known to be candied fruits. Also, In re Levin applies. Attention is invited to In re Levin, 84 USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected

ingredients which produces a new, unexpected, and useful function. In re Benjamin D. White, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 USPQ 267; In re Mason et al., 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.Therefore, it would have been obvious to add fruit to the peanut paste and to use dried fruits for convenience. Nothing new is seen in adding extracts to the peanut mixture as in claim 23, and 26. See In re Levin as above.

Additional limitations such as mixing and blending for a particular length of time as in claim 11, using particular low temperatures as in claim 12 and pumping the mixture as in claim 41 are seen as obvious given the technology of the times.

The limitations of claims 14, 15, 18 have been disclosed above and are obvious for those reasons.

Edson discloses the use of peanuts as in claims 21 and 22.

Edson discloses adding flavorings such as sugar as in claim 18 (col. 2, lines 40-44). Avera discloses adding flavorings at within the claimed amounts. (col. 6, lines 28-30).

Claim 25 further require particular amounts of spices or flavorings. However, Edson discloses the addition of sugar, which is a flavorant (col. 2, lines 40-44). Nothing is seen that the amounts of one part of peanut past to seven parts of sugar would affect the amount of oil separation. In addition, the amounts are seen as within the skill of the ordinary worker as in claim 25. Therefore, it would have been obvious to add particular amounts of spices or flavorings to the claimed composition.

The limitations of claims 33 -36 have been disclosed above and are obvious for those reasons.

Claim 37 further requires mixing and blending the coarse nut paste and adding salt or sugar. Rombauer discloses adding sugar or salt to the peanuts. Nothing is seen that sugar and salt would not have been added to the nuts at the paste stage as nothing would have been gained in adding such during the grinding stage and it would be easier to determine how much to add if such were added during the paste stage. Therefore, it would have been obvious to add sugar and salt to the nut paste during the grinding stage.

The limitations of claim 38 have been disclosed above and are obvious for those reasons.

Cammarn et al. disclose adding sugar and salt and mixing for an additional 15 minutes as in claim 39 (col. 5, lines 1-15).

Claim 40 further requires mixing and blending at temperatures from 120 to 125 F. Nothing is seen in Rombauer that such temperatures are not present since grinding makes for heat. Nothing new is seen in blending at these low temperatures, since no ingredients such as hydrogenated oils and stabilizers are in the product, which would have required higher mixing temperatures. Therefore, it would have been obvious to not use very much heat if it was not required.

The further limitations of claims 42-43, 45-52 have been disclosed above and are obvious for those reasons.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to the above claims, and further in view of Bolton (1,687,154).

Claim 5 further requires that other ingredients be added to the peanut paste. This is so well known, that a reference is hardly required. Honey and jelly are well known ingredients, which are added to peanut paste as are sugar and salt. Also, Bolton discloses that it is known to add cucumbers to peanut butter (col. 1, lines 12-50). Therefore, it would have been obvious to add known ingredients to the peanut paste in the process of the combined references.

Claim 5 now requires that the ingredients are added during the grinding step. However, no basis is seen for this limitation as above. In addition, Stockton discloses that it is known to add salt in the grinding step (page 2, lines 62-65, col. 2, lines 1-75). Therefore, it would have been obvious to add flavoring ingredients in the grinding step in the process of the combined references.

ARGUMENTS

Applicant's arguments filed 4-16-08 have been fully considered but they are not persuasive. Applicants argue that the cited references all contain ingredients now excluded from the claims. However, the various references were used in combination for what was cited in the office action and for teachings that show that it would have been obvious to make a composition as applicant has done.

Applicants argue that the cited particle size has not been shown. However, as crunchy peanut butter is known, and most likely Rombauer shows coarse grin dining,

and all it takes to make a coarsely ground peanut is to grind to a particular particle size, by stopping the machine, it is seen that it would have been obvious to grind to any particle size.

Applicants' claims do not contain certain ingredients. However, nothing new is seen in making a peanut paste which does not contain the ingredients the cited ingredients.

Nothing new is seen to have been produced from grinding nuts to a particular particle size for the reasons cited above, as no coaction of ingredients (In re Levin) is seen to make a new product and coarsely ground peanuts are known.

The further references were used for what was cited . Rombauer discloses that even the Standards of Identity require 90% peanuts in peanut butter. It would have been obvious to use less as in peanut spreads. Nothing has been shown that Rombauer does not produce the claimed particle size.

Stockton is used only for the teaching that the degree of oil separation can be prevented partially by coarse grinding, that the finer the grinding the more pronounced the tendency to gravitational separation (page 1, lines 89-103). Even if the reference teaches away, the concept is known. Applicants' claims do not exclude the use of blanched nuts.

Applicants admit as on page 7, lines 15-20, that "natural" peanut butters do not contain hydrogenated fat and emulsifiers. Certainly, they would not contain bulking agents if the bulking agent was not natural. Applicants do not claim any particular bulking agents in order to know if they are natural materials or would be excluded.

Step 220 adds sugar into the mixture which could be a bulking agent (page 11, lines 1-2.).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Helen F. Pratt/

Primary Examiner, Art Unit 1794

Hp 7-10-08